



VOLUME 50

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NUMBER 4

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Appraiser's Update

Fall Caravan 2005!

Don't miss out on a great session with **FREE COOKIES AND DRINKS**, plus you get 6 hrs of required continuing ed!

Instructor: Debbie Long

Course: "Risky Business: How to Reduce Risk in the Real Estate Business"

Registration Fee: \$50.00 (including snacks during morning break)

Class begins at 9:00 a.m.

(Walk in registration begins at 8:15 a.m.)

For access assistance, handicapped persons may call the Commission office at (605) 773.3600

Pierre - Ramkota - October 4th

Spearfish - Holiday Inn - October 5th

Rapid City - Ramkota - October 6th

Aberdeen - Ramkota - October 11th

Watertown - Ramkota - October 12th

Sioux Falls - Washington Pavilion Belbas Theater - October 13 & 14th

Pre-registration is required to guarantee admission. Failure to register may prohibit your attendance if the class is full. The Commission will retain \$10 of any refunded registration fee. Please complete and mail the registration form below along with a check for the registration fee to the S.D. Real Estate Commission at 221 West Capitol, Pierre SD 57501. Registration deadline is 5 days prior to each session.

Registrations will not be accepted over the phone or by fax.

✂ -----

S.D. REAL ESTATE COMMISSION Registration Form - Fall 2005 Educational Caravan

Name _____ License Number and Type _____

(Mailing Address) _____ (City) _____ (State) _____ (Zipcode) _____ (Phone) _____

Please check which you would like to attend.

- | | |
|--|--|
| <input type="checkbox"/> Pierre -- October 4 th | <input type="checkbox"/> Watertown -- October 12 th |
| <input type="checkbox"/> Spearfish -- October 5 th | <input type="checkbox"/> Sioux Falls -- October 13 th |
| <input type="checkbox"/> Rapid City -- October 6 th | <input type="checkbox"/> Sioux Falls -- October 14 th |
| <input type="checkbox"/> Aberdeen -- October 11 th | |

\$50 registration fee payable to SDREC must accompany this form.
PLEASE -- one registrant per form

A Letter From the Chairman



Greetings fellow licensees! When the Commission elected me to be chairman of the Commission for fiscal year 2006, they didn't tell me about this aspect of the job.

As we start a new fiscal year, let me first thank Loren Anderson for his commitment to this commission and the real estate industry as a whole. Loren has dedicated his life to real estate excellence and deserves our heartfelt thanks for serving as chairman - and to you, Loren - GOOD JOB!

Now a caveat to protect the rest of the Real Estate Commission; I am but twenty per cent of the Commission and some of the topics I write in this and future articles are based on my opinion and may not represent the Commission as a whole, so please call me if you have any questions. I would certainly appreciate any suggestions for the rest of my newsletter articles.

The real estate industry is in the middle of a couple of scuffles with the Department of Justice (DOJ). The first issue being minimum service requirements for listings, and the second the banning inducements and rebates of commissions.

As for the minimum services issue, the DOJ does not seem to understand agency. It is having difficulty comprehending the fact that if a listing agent does not do his/her job, then the buyer's agent must step in to protect buyer (due to their fiduciary responsibility to that client.) I believe we do need some minimums to protect the public from themselves. (Somebody has to make sure that it closes.)

Regarding the banning of inducements and rebates of commissions, the DOJ recently sued the Kentucky Real Estate Commission for its inducements and rebates ban. Kentucky projected its legal fees could be over a million dollars to defend its position in a court of law. The investigation alone resulted in Kentucky hiring additional staff in order to respond to the DOJ's interrogatory which resulted in over 10,000 documents submitted to the DOJ. Kentucky has reached a settlement with the DOJ.

Just prior to Kentucky's settlement with the DOJ, Dee Jones Noordermeer, executive director for the South Dakota Real Estate Commission was served notice that the DOJ was investigating South Dakota's declaratory rulings banning inducements and commission rebates. Dee negotiated a settlement that was ratified by the Commission whereas the DOJ would drop its investigation if the Commission repealed the declaratory rulings. At the June Commission meeting, the Commission unanimously voted to repeal the declaratory rulings. This newsletter contains more information on this, including the resolutions to repeal the rulings. Needless to say, neither the State of South Dakota nor the Real Estate Commission could afford a million dollar lawsuit and I think the Commission was wise in not putting up a fight. Who says that government isn't practical?

Think legally and use common sense or the Commission may be inviting you to one of its meetings!

Until next issue,
Charlie

From the Director's Desk



The end of summer is fast approaching. I hope all of you were able to take some time off from your busy schedules to just relax.

Hopefully, you have read Chairman Larkin's article about the Commission's dealings with the Antitrust Division of the U.S. Department of Justice (DOJ). Other states have also been under scrutiny by the DOJ, so South Dakota wasn't alone. Keep in mind, if you do offer an incentive, that offer must be in writing and you cannot pay a referral fee to an unlicensed person.

I recently returned from Kansas City where I met with educators, test developers and other regulators to review and edit a new broker exam. This will be a simulation exam which tests a candidate's ability to handle certain situations in a real estate transaction.

The Commission is excited to have Debbie Long back with us to present the Fall Caravan. Please try to attend because, as usual, the subject matter is very timely.

By the time the Caravan rolls around, new administrative rules addressing appointed agency should be in place. The public hearing for these rules will take place on August 25th. For details, please refer to the Notice of Hearing elsewhere in this newsletter.

Also in this issue, you will note that the Commission has a new consumer guide. It is also available on the Commission's website at www.state.sd.us/sdrec.

Just a reminder — the new seller's property condition disclosure is in force. Although the new form eliminates having a separate form for the disclosure of the prior manufacturing of methamphetamines, it does not do away with the lead-based paint form. That form still has to be completed if the property being sold was built prior to 1978.

As you can see, lots of things are happening at the Commission office. Some may excite you — others may not. Charles Dickens wrote, "Change begets change." Isn't that the truth!

DjN

South Dakota Real Estate Commission Notice of Public Hearing to Adopt Rules

A public hearing will be held in Conference Room A of the Holiday Inn Express, 110 East Stanley, Ft. Pierre, South Dakota at 9:00 a.m. CDT on August 25, 2005 to consider the adoption of proposed rules §§ 20:69:16:03 to 20:69:16:10, inclusive, and amended rules §§ 20:69:10:03; 20:69:16:01, and 20:69:17:01.

The effect of rules changes will be to clarify appointed agent procedures regarding disclosure and confidentiality, to repeal forms in appendices by establishing contents of forms prescribed by the Real Estate Commission, and to update materials incorporated by reference.

The reason for adopting the proposed rules is to establish provisions for appointed agency procedures and contents of forms, and to conform the rules with statutes.

Persons interested in presenting data, opinions or arguments for or against proposed rules may do so by appearing in person at the hearing or by mail to Dee Jones Noordermeer, Executive Director, South Dakota Real Estate Commission, 221 West Capitol, Suite 101, Pierre, SD 57501. Material sent by mail must reach the office of the South Dakota Real Estate Commission on or before August 22, 2005, in order to be taken into consideration.

After the hearing, the commission will consider all written and oral comments it receives on the proposed rules. The commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held at a physically accessible place. Please notify the South Dakota Real Estate Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3600.

Copies of the proposed rules may be obtained without charge from the South Dakota Real Estate Commission, 221 W. Capitol, Suite 101, Pierre, SD 57501.

New Certificate of Real Estate Value Form

The Dept. of Revenue & Regulation Property Tax Division has revised the Certificate of Real Estate Value Form. The new form will be required for deeds and contract for deeds recorded after August 15 and is available on the Department's website - www.state.sd.us/drr2/revenue.html. Simply click on the "forms" tab under the main logo, and then choose "Property Tax Forms". Please note - this form must be submitted to the Register of Deeds, not the SDREC office. Contact the Property Tax Division of the Department of Revenue and Regulation in Pierre at (605) 773-3311 for more information.

Notice to Licensees

The South Dakota Real Estate Commission, in response to a U.S. Department of Justice investigation, has rescinded and nullified two declaratory rulings that prohibited licensees from offering rebates, inducements, or other discounts to consumers.

All South Dakota licensees may now offer consumers rebates of commission fees, inducements, or other discounts. South Dakota licensees also may use truthful and non-misleading advertisements to notify consumers of rebates, inducements, or other discounts, which they may choose to offer.

If you were disciplined for offering a rebate, inducement, or other discount, then that disciplinary action shall be deemed null and void, and the Commission will note that in its records.

Please note that the Commission's decision to nullify and rescind the declaratory rulings that banned rebates, inducements, or other discounts does not alter the Commission's authority to enforce other regulations or declaratory rulings generally and to prohibit advertising or other conduct that is fraudulent, false, deceptive, or misleading.

The Commission resolutions may be found on the SDREC website at www.state.sd.us/sdrec

Caravan Classroom Guidelines

In order to assure that Caravan attendees and instructor(s) benefit from minimal disruption during the course, attendees will be required to follow the following participation standards:

1. In accordance with SDAR 20:69:11:19, a participant will not receive credit for a course if he or she is absent for more than ten percent of the classroom hours. This will be strictly enforced and there are no exceptions. Please be on time for each session and make plans to stay for the entire course.

2. No certificates of completion will be issued before the end of class.

3. All cell phones and other electronic devices must be TURNED OFF and not

turned on until the scheduled breaks or conclusion of class. You cannot leave class to take or make phone calls - please wait until the next break.

4. Attendees shall direct their attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other attendees or the instructor, or which would otherwise disrupt the orderly conduct of the course. Attendees are not allowed to read newspapers, books, magazines, etc., work on laptop computers, challenge the instructor or carry on conversations with other attendees in a manner that disrupts the teaching of the course.

The Commission strives to provide licensees with quality education programs taught by skilled instructors. These standards are a result of feedback received from attendees at past Caravan courses.

South Dakota Real Estate VIEW

Official Publication of the
South Dakota Real Estate Commission
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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensee who recently passed away:

Archie Sealey, Ortonville, MN

Former Director Recalls Early Days of Commission



The Real Estate Commission has seen many changes since its creation in 1955 by Governor Joe Foss and the SD Legislature. While there are many individuals

who have contributed to the direction and guidance of the Commission, no single person has had as long of an impact as its longest-serving director, Jack Burchill.

Jack was named Executive Secretary in September, 1957, succeeding Ed Mullally, and would serve until his retirement in 1988. Prior to his tenure with the Real Estate Commission, Jack earned a masters degree in education and served as the state's Director of Education. He recruited Mary Wagner, also from the Department of Education, to serve as the office secretary, which she did for 25 years. It was under Jack's leadership that much of the groundwork was laid for the laws and rules that govern today's real estate profession in South Dakota.

He drew upon his background in education to develop the first real estate exam. Candidates were given the exams in the House Chamber of the state capitol building and were tested on license law, real estate math, closing procedures and tax/insurance regulations. Real estate schools and pre-licensing education did not yet exist, as was reflected in the fifty percent pass rate. As the need for formal instruction grew, Jack provided guidance to real estate educators to make minimum educational standards a reality.

Another unique challenge during those early days was fiscal responsibility. The

commission office was designed to be self-supporting, meaning it would receive no general funds from the Legislature and the revenue expended was not to exceed the income generated by licensing fees. With licensee numbers just barely over a hundred, Jack recalls the commissioners borrowing money to cover operating expenses.

The number of licensees steadily increased over the years and for a period during the 70's, Jack was testing over a hundred fifty candidates per month. Due to the influx of licensees, the commission even employed a full-time attorney for a few years.

Jack says that one of the most rewarding aspects of serving as Executive Secretary was working with so many wonderful commissioners and people in the real estate industry. He continues to respect and admire their dedication to the profession. Although the faces have changed over the years, the duty of the commission to protect the public, which Jack so proficiently helped to define, remains the same. The commission office continues to serve the Commission, its licensees and consumers well.

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker

Gallegos, Carol J – Chandler, AZ
Johnson, Carolyn M – Norcross, GA
Larson, Cindy L – Wentworth
Parks, James A – Sioux City, IA
Russen, Sandra J – Montevideo, MN
Swann, Kevin L – Fargo, ND
Urdiales, Danny – Fort Morgan, CO

Broker Associate

Allison, Vernon "Jim" – Sturgis
Atherton, Jill M – Huron
Baumiller, Anna M – Gary
Benitez, Leonardo – Sioux Falls
Biers, Jamie L – Piedmont
Billion, Connie K – Sioux Falls
Biscardi, Sharon A – Yankton
Christensen, Aaron M – Rapid City
Dean, Melissa A – Spearfish
Donahue, Michael D – Spearfish
Dummer, Heath B – Mitchell
Fleming, Anthony S – Sioux Falls
Ford, Perry J – Yankton
Fossen, Sylvia I – Hot Springs
Hagggar, II, Tim F – Piedmont

Harms, Eric – Sioux Falls
Iversen, Dawn – Pierre
Johnson, Lindsay M – Huron
Jones, David A – Rapid City
Kahler, Jeremy D – Rapid City
Kanable, Sarah M – Lennox
Kohn, Inge – Spearfish
Krcil, Lavonne M – Mitchell
Logsdon, Kimberly A – Rapid City
Martens, Brandon P – Sioux Falls
Oines, Ryan R – Sioux Falls
Olsen, Ashley M – Rapid City
Olson, Matthew E – Vermillion
Pederson, Cheree M – Rapid City
Rand, Richard E – Spearfish
Rentz, Rhonda L – Dell Rapids
Rogers, Kelly E – N. Sioux City
Schaffer, Stephen E – Lead
Schecher, Larry L – Rapid City
Scheetz, Russell J – Rapid City
Shafer, Gretchen B – Sioux Falls
Specht, Debra M – Yankton
Sundby, John D – Rapid City
Teupel, John E – Spearfish
Thiewes, Bruce E – Rapid City
Thorpe, Crystal A – Aberdeen
Vice, Michelle L – Spearfish
Waltman, Debra – Brookings
Waltman, Riley G – Box Elder
Wassink, Owen L – Sioux Falls
Wilson, Candace M – Sioux Falls
Zerfas, Gregory S – Sioux Falls

Property Manager

Arp, Gina – Custer
Bornitz, Connie L – Yankton
Vetter, Debra J – Sioux Falls
Zimmel, Pamela K – Sioux Falls

Reg. Home Inspector

Hovdenes, Terry D – Sioux Falls
Worthington, Todd R – Sioux Falls
Yerigan, Craig A – Watertown

Res. Rental Agent

Christopoulos, Kathleen A – Sioux Falls
Farnham, Heather L – Kranzburg

Salesperson

Blaue, Debra J – Pipestone, MN
Pifer, Kevin D – Fargo, ND
Schutte, Timothy D – Ocheyedan, IA

Time Share Agent

Meyer, Scott D – Rapid City

Auctioneer

Enquist, Jeff – Stockholm
Jensen, William – McLaughlin



Buying and Selling a Home in South Dakota

A Consumer Guide

Published by

South Dakota
Real Estate Commission

221 West Capitol, Suite 101
Pierre, SD 57501
(605) 773-3600
FAX (605) 773-4356
www.state.sd.us/sdrec

E-Mail: DRR-REALESTATE @state.sd.us

The new Consumer Guides are available!

Guides may be ordered in quantities at the following prices:

Up to 50 Guides - \$1.00 each
100 Guides - \$50

50 Guides - \$30
500 Guides - \$225

1,000 Guides - \$400

Make checks payable to SD Real Estate Commission and send with the order to:
SD Real Estate Commission - 221 W. Capitol Ave., Suite 101
Pierre, SD 57501

Name/Firm Name: _____

Shipping Address: _____

City, ST Zip: _____

Quantity Ordered: _____ Amt. Enclosed: _____



APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 East Capitol, Pierre, SD 57501, 605-773-4608

(The following article courtesy of the Master Appraiser, Official Publication of the National Association of Master Appraisers, Vol. XXIII No. 4 April 2005.)

FBI Warns of Mortgage Fraud 'Epidemic'

Rampant fraud in the mortgage industry has increased so sharply that the FBI has warned of an "epidemic" of financial crimes which, if not curtailed, could become "the next S&L crisis."

Assistant FBI Director Chris Swecker said the booming mortgage market, fueled by low interest rates and soaring home values, has attracted unscrupulous professionals and criminal groups whose fraudulent activities could cause multibillion-dollar losses to financial institutions. "It has the potential to be an epidemic," said Swecker, who heads the Criminal Division at FBI headquarters in Washington. "We think we can prevent a problem that could have as much impact as the S&L crisis," he said.

In the 1980s, many Savings and Loans failed because of poor management, risky loans and investments, and in some cases, fraud. Taxpayers were left with a \$132

billion tab to cover federal guarantees to S&L customers.

The FBI has dispatched undercover teams across the country in an urgent investigation into dealings by suspect mortgage brokers, appraisers, short term investors, and loan officers, Swecker, flanked by FBI executives and Justice Department prosecutors, revealed.

In one operation, six individuals were arrested in Charlotte, charged with bank fraud for their roles in a multimillion-dollar mortgage fraud, officials said. The two-year investigation found fraudulent loans that exposed financial institutions and mortgage companies to \$130 million in potential losses, they said.

Federal agents in Jacksonville arrested two people and executed seven search warrants in connection with an alleged scheme designed to defraud banks of \$22 million, officials said.

The number of open FBI mortgage fraud investigations has increased more than five-fold in the past three years, from 102 probes in 2001 to 533 as of June 30 this year, the FBI said. The potential losses are staggering, and many financial institutions are cooperating with investigators. Officials noted mortgage industry sources have reported more than 12,000 cases of

suspicious activity in the past nine months, three times the number reported in all of 2001.

While the FBI described mortgage related fraud as a nationwide problem, it said the levels of illegal activity are worse in some locations than in others.

States identified as the top 10 "hot spots" for mortgage fraud are Georgia, South Carolina, Florida, Michigan, Illinois, Missouri, California, Nevada, Utah and Colorado. "It's bad in Georgia, the Atlanta area," said John Gillies, chief of the FBI's Financial Institutions Fraud Unit. "It was bad in the Charlotte area, but we've had a lot of undercover activity there that's helped push the problem into South Carolina."

Josh Hochberg, head of the Justice Department's Fraud Section, said some organized ethnic groups are becoming involved in mortgage fraud schemes, but he declined to identify the groups.

Officials said mortgage fraud is one prominent aspect of a wider problem of fraud aimed at financial institutions. The FBI said action has been taken against 205 individuals in the past months in what it described as the "largest nationwide enforcement operation in FBI history directed at organized groups and individuals engaged in financial institution fraud."

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

New Licensees – June/July

Jerry Tufte, State-Registered –
Hermosa, SD
Kara L. Hible, State-Registered –
Watertown, SD
Keith L. Schultz, Certified-General –
Fayetteville, AR
Michael J. Richter, State-Registered –
Sioux Falls, SD

USPAP Q & A

Vol. 7, No. 6, June 2005

Does a New Assignment Require Starting Over?

Question: AO-26 and AO-27 clarify that I cannot readdress an appraisal, and I must treat a subsequent request as a new assignment. Does that mean I must “start from scratch” since I would be performing a new assignment for a different client? Must I re-inspect the property?

USPAP Compliance and Jurisdictional Exception

Question: I am a real property appraiser and a government employee. The agency I work for wants me to provide a “preliminary estimate of value.” The agency policy states that this work is not an appraisal and is not covered by USPAP because of a Jurisdictional Exception. Should I comply with USPAP when I prepare a “preliminary estimate of value?”

Readdressing With Lender Release

Question: I am aware of Advisory Opinions AO-26 “Readdressing (Transferring) a Report to Another Party” and AO-27 “Appraising the Same Property for a New Client.” Does that guidance still apply if Lender A releases me to perform another assignment, or can I just readdress the report to Lender B since I have obtained a release?

Vol. 7, No. 7, July 2005

Fannie Mae Appraisal Report Forms Q & A

Question #1: What is meant by the term Intended User in USPAP?

Question #2: I have studied the recently issued revised Fannie Mae appraisal report Form 1004. On that form, the lender/client is identified as the Intended User. However, Item # 23 in the Appraiser’s Certification states:

“The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.”

I am concerned that Item # 23 is not clear, and I wonder if the parties listed in Item # 23 could interpret it to mean that they are also Intended Users. To be in compliance with USPAP, what should I do

about this item in the Appraiser’s Certification?

Question #3: Does the ASB consider Item #23 in the Appraiser’s Certification on report Form 1004 confusing?

Question #4: What should an appraiser do if the parties listed in Appraiser’s Certification Item # 23 are determined by the appraiser to be Intended Users? What if the appraiser determines they are not Intended Users?

Question #5: But how can I supplement the Fannie Mae appraisal report forms? Fannie Mae prohibits supplementation of the certification regarding anything material.

Answers to the above questions can be found at: www.appraisalfoundation.org

Vacant Land: A Nightmare For An Appraiser

by Robert C. Wiley, President, Liability Insurance Administrators, and Claudia Gaglione, Gaglione & Dolan.

For many appraisers, the biggest nightmare of their career begins when someone requests a vacant land appraisal. The problem is that the appraiser does not even know the nightmare has begun until the appraisal is complete and the claim served. For a fact, too many appraisers accept vacant land assignments when they lack the experience to approach these assignments correctly.

It may or may not be surprising to learn that most claims arising from vacant land appraisals are caused by the appraiser **actually appraising the wrong property**. It is especially frustrating when, after the claim is made or the lawsuit is filed, the appraiser admits that he or she was not certain they inspected the correct parcel, but went ahead and did the report anyway.

Other claims problems arise from this misidentification, one being to determine the access. The appraiser drives up to what he/she thinks is the right property on a paved road, so it is assumed that access is not an issue. Counsel comes to learn that the lot that was supposed to be appraised is the adjacent, inland lot, which does not have access to that road.

There may be unrecorded easements or other issues that the appraiser would not and

could not discover during the course of the inspection. Besides looking at the right parcel, make sure there is sufficient scope of work language in the report:

"Appraiser cannot guarantee that property is free of encroachments or easements, and recommends further investigation and survey."

Whether or not a parcel of land is buildable will likely have significant impact on value. And again, a problem arises when the lot the appraiser looks at is flat and seemingly buildable, while the lot assigned to be appraised is a 90-degree slope. A flat parcel may be buildable, but not always. There could be soil problems, water table issues, etc., that the appraiser would know nothing about. Because these concerns might not be covered by the limiting conditions it is important to include language declaring the appraiser is not responsible for and has not undertaken an investigation of unapparent conditions, and cannot render a definitive opinion about buildability. It should be stated that the value is given based on the assumption that the land is buildable:

"Appraiser's conclusion of value is based upon the assumption that there are no hidden or unapparent conditions of the property that might impact upon buildability. Appraiser recommends due diligence be conducted through local building department or municipality to investigate buildability and whether property is suitable for intended use. Appraiser makes no representations, guarantees or warranties."

Summary

No appraiser should take on an assignment to estimate the value of vacant land without requisite experience, and unless willing to do the level of research necessary to complete the assignment. If you accept such an assignment, this is not the time to shortcut any step of the appraisal process. In fact, it may mean a lot more research, a lot more contact with city records and officials, and communication with local real estate brokers and other appraisers familiar with vacant land in their area, and the past history of the site. It may be necessary to provide either a narrative appraisal or an addendum to the one-page vacant land appraisal form many appraisers continue to use. If you don't believe the fee you charge will compensate you for the amount of work that is required, you are

better off to not accept the assignment in the first place.

TELL TALE CLAIMS

No Access

An appraiser in Arizona estimated value for 2.0 acres of vacant land at \$160,000 for his client, a mortgage broker. This broker, unbeknownst to the appraiser, worked with a hard money lender. The borrower defaulted on the \$88,000 loan, declaring bankruptcy 90 days after the hard money lender provided the loan. A second appraiser was retained by the lender to determine value after the foreclosure was finalized. This appraiser estimated value to be approximately \$90,000 for the land, based on the fact that the lot had no access, i.e., it was land-locked.

The hard money lender first filed a complaint with the Arizona State Board. The Board concluded the appraisal did violate USPAP and imposed certain discipline. The hard money lender used the findings as a springboard to file a civil lawsuit against the appraiser for damages, contending professional negligence.

It became clear that the appraiser did not properly research the land he was appraising. The appraiser had been shown the wrong property by the owner/borrower, who knew that there was no access to the site, but failed to tell the appraiser. Instead he had led the appraiser to think he was supposed to inspect an adjoining parcel. The appraiser could have easily discovered the problem had he consulted the appropriate maps, clearly showing the location of the 2 acres serving as security for the loan.

Despite the liability problem, damages were nominal because the value of the land was still about enough to cover the hard money loan the lender had made to the borrower.

The Wrong Lot

An appraiser in California accepted a vacant land assignment from a mortgage broker despite the fact that the appraiser had done no more than 2 or 3 such appraisals in his young career. When he tried to do his inspection, the appraiser was confused by the undeveloped, and narrow, winding streets in the hillsides of an affluent community. Finally the appraiser came upon what looked to be the lot he was supposed to appraise, which was flat and fronting a public street. He had some doubts but figured this had to be the site.

Comparing similar vacant land sales, he valued the lot for \$465,000.

When the borrower defaulted, the lender had the property appraised by another appraiser, who was very familiar with the area in question. He quickly determined his client had a big problem. The actual lot that secured the loan was land-locked and far up a slope, obviously rendering it unbuildable, even if access could be secured. The mortgage company had loaned \$190,000 on a lot that could only sell for \$5,000 to an adjoining landowner.

Needless to say, a lawsuit for damages was filed. The appraiser had to admit to us that he only guessed where the lot was located. No one met him out on the site to show him where it was, and he never questioned, or told his client about the difficulties he had encountered when trying to locate the lot. As it turned out the appraiser had not even been on the right street!

To defend the appraiser, we were able to shift some of the blame to the mortgage broker. It turned out that the broker knew there was a problem with the lot because another appraiser retained to do an appraisal had reported being unable to locate the property. This information was not passed along to the insured or to the lender. The mortgage broker also failed to convey to the lender that the borrower had credit problems. The lender violated its own guidelines by agreeing to a loan on property located outside the acceptable geographic area stated in its own lending guidelines. The lender from northern California would not have ordinarily made a loan on property outside its area without performing a second inspection, or without having the property inspected by one of its own loan officers.

In the end, despite showing negligence on the parts of both lender and mortgage broker, the insurer for the appraiser settled for over \$100,000.

Verdict for the Appraiser

Not every vacant land appraisal results in a big settlement. An appraiser in Ohio was asked to appraise a 135-acre vacant land site. He estimated value to be \$3.24 million. The lender made a loan to the borrower of over \$3 million. Only 37 days after the money was disbursed to the borrower, the loan defaulted. The borrower was an internet company whose business failed. The lender took possession of the land, but made no real effort to resell. Instead of

marketing it with a professional commercial realtor, a little wooden "For Sale" sign was posted on the property, and the appraiser was sued for negligence.

The Bank had an appraisal done estimating the value of the property to be only \$515,000. At trial, the Bank claimed the actual value was \$0 because it had never been sold.

Our appraiser expert supported the original estimated \$3.24 million value. In addition, we retained a banking expert who severely criticized many aspects of the bank's conduct in qualifying the borrower for the loan. We had a realtor testify about the value of a large parcel with freeway access, that was zoned commercial, and the efforts required to market such property appropriately.

In order to avoid the uncertainties of trial, settlement was actively discussed. The Bank's insistence that nothing less than \$1 million would be acceptable made trial unavoidable.

The jury rendered a 9-0 verdict in favor of the appraiser, and did not see fit to reward the Bank for its failure to mitigate damages by properly attempting to resell the security. As it turned out, the working class jury related to the appraiser who they saw as just "doing his job" rather than to the Bank who they thought had "dropped the ball".

2005 Renewal

The 2005 renewal applications were mailed the first week in July. In order to renew your certificate for state-certified general, state-certified residential, state-licensed and state-registered appraiser you must submit the completed application, applicable renewal fees and verification of 28 hours of approved continuing education which includes the 7-hour National USPAP update course by August 17, 2005. (The 15-hour National USPAP Course may not be submitted in lieu of the 7-hour National USPAP update course.)

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